DEPARTMENT OF STATE REVENUE

02920268.LOF

LETTER OF FINDINGS NUMBER 92-0268 ITC
Gross Income Tax
For The Periods: March 31, 1988 through and including March 31, 1990

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Gross Income Tax – Small Business Corporation Exemption

Authority: IC 6-2.1-3-24.5; Caylor Nickel Clinic v. Department of State Revenue 569 N.E.2d (Ind. Tax 1991).

The taxpayer protested the assessment of gross income tax for fiscal year ended March 31, 1988.

STATEMENT OF FACTS

The taxpayer was incorporated and headquartered outside Indiana. The sole owner of the taxpayer also owns other corporations, which are brother sister corporations. The taxpayer filed an Indiana form IT20 for fiscal year ended March 31, 1988 for income derived from Indiana sources. The taxpayer filed as a controlled group for federal income tax purposes.

DISCUSSION

1. Gross Income Tax – Small Business Corporations

The taxpayer protested the disallowance of the small business corporation exemption from gross income tax for fiscal year ended March 31, 1998. IC 6-2.1-3-24.5 provides:

(a) For purposes of this section, "small business corporation" has the same definition that term has in Section 1361(b) of the Internal Revenue Code. However, a corporate is a small business corporation for the purposes of this section even if one (1) of its shareholders is a qualified trust that forms a part of an employee stock ownership plan under Section 401(a) of the Internal Revenue Code.

(b) Except as provided in subsection (c), gross income received by a small business corporation is exempt form gross income tax.

(c) A small business corporation is not exempt from gross income tax under this section for a taxable year if for that taxable year twenty-five percent (25%) or more of the small business corporation's gross income consisted of passive investment income (as defined in Section 1362(d)(3)(D) of the Internal Revenue Code.

(d) Any corporation that claims an exemption under this section shall annually provide the department with proof that it is a small business corporation. The corporation must provide that proof on or before the due date of its gross income tax return (including any extensions granted by the department).

To qualify under 1361(b) of the Internal Revenue Code, a corporation can not have more than 35 shareholders, have a shareholder that is an estate or a trust other than a trust described in subsection (c)(2), have a nonresident alien as a shareholder, have more than one (1) class of stock or be an ineligible corporation.

Under IRC 1361(b)(2), an ineligible corporation means:

(A) a member of an affiliated group (determined under section 1504 without regard to the exceptions contained in subsection (b) thereof), …

IRC 1504 defines an affiliated group as follows:

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation, but only if

(B) (I) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and…

The taxpayer was informed that it did not qualify, because it was part of a controlled group. There are no provisions, which state that being part of a controlled group is equivalent to being part of an affiliated group and disqualifies a taxpayer from subchapter S corporation status. The taxpayer has one shareholder, who is a United States citizen, has one (1) class of stock, and is not an ineligible corporation. The taxpayer is not an ineligible corporation, because it is not part of an affiliated group, is not a financial institution, is not an insurance company subject to subchapter L tax, is not qualified to elect under section 936, and is not a DISC or a former DISC. Therefore, the taxpayer qualified for subchapter S status under I.R.C. 1361(b).

In 1988, the taxpayer was required to provide the department with proof that it was a small business corporation. The taxpayer timely filed form IT-20 (on or before the extension date of December 15, 1988), and prior to the expiration of the statute of limitations, filed an IT-20SC as an amended return. According to Caylor Nickel

Clinic v. Department of State Revenue 569 N.E.2d (Ind. Tax 1991), the timely filing of the return is not a prerequisite to obtaining the exemption. The taxpayer timely filed an IT-20 with zero amount due under gross income tax, which is deemed notice. The filing of the amended return is actual notice of the qualification within the year.

FINDINGS

The taxpayer's protest is sustained.